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Date: 11/2/2017 2:12:00 PM

Subject: FW: Briefing Paper for Deschutes River TMDL NOI Briefing with Dan

Attachments: Deschutes TMDL NOI Briefing\_Final.docx

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FYI. Thank you all very much for your help on this (particularly Chris, the original drafter and the Deschutes River TMDL expert).

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**From:** Brown, Leah

**Sent:** Thursday, November 02, 2017 2:04 PM

**To:** R10-ORA ; Tyler, Kendra

**Cc:** Zell, Christopher

**Subject:** Briefing Paper for Deschutes River TMDL NOI Briefing with Dan

Hi Kendra,

Please find attached the briefing paper for our 11/7/17 briefing with Dan on the Deschutes River TMDL NOI. If you have any questions don't hesitate to ask.

Thanks,

Leah

Leah Brown

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## Region 10 Briefing Paper for the Office of the Regional Administrator

### MEETING/EVENT TITLE:

*"Deschutes TMDL Notice of Intent from Northwest Environmental Advocates – How to Respond"*

MEETING DATE: 11/7/2017 10:00 am – 10:45 am

LOCATION: Dan's Office

CONFERENCE CALL LINE: (b) (6)

PREPARED BY: Chris Zell and Leah Brown

DATE: 11/7/2017

INVITED EPA ATTENDEES: Region 10: Dan Opalski; Dave Croxton; Leah Brown; Jennifer Byrne; Laurie Mann; Cara Steiner-Riley; Chris Zell. Headquarters: Jim Havard; Holly Arrigoni; Jim Curtin; Chris Lewicki.

### I. REQUESTING OFFICE

Office of Water and Watersheds / Watershed Unit

### II. TIMING

(b)(5) attorney-client

### III. PURPOSE

(b)(5) attorney-client

### IV. BACKGROUND/HISTORY

The Deschutes River, Percival Creek, and Budd Inlet Tributaries (Phase 1) TMDL study area (186 mi<sup>2</sup>) is located in south Puget Sound and is situated within the boundaries of Thurston and Lewis Counties, Washington. The study

area includes the major cities or towns of Olympia, Lacey, Tumwater, and Rainier. During early stages of TMDL development (~2005-2014), Ecology initially planned to submit a TMDL addressing impairments in both freshwater (Deschutes) and marine (Budd Inlet) water quality limited segments. However, due to the political challenges of removing the dam at Capitol Lake (a primary low dissolved oxygen contributor to Budd Inlet), Ecology decided to split the TMDL into freshwater and marine segments. Ecology submitted the freshwater (Phase 1) Deschutes TMDL to EPA for approval on December 17, 2015. Marine segments (Phase 2, Budd Inlet) are planned for completion in 2020.

The 2015 TMDL submittal included a request for EPA to approve allocations for 73 Water Quality Limited Segments (WQLSs) impaired by five pollutants (temperature, dissolved oxygen [DO], pH, fecal coliform [bacteria], and fine sediment). Beginning in February 2016, EPA and Ecology have discussed opportunities to remedy legal and technical shortcomings of the TMDL that have been identified by both EPA (WU, ORC) and potential plaintiffs (NWEA, Squaxin Island Tribe). These shortcomings are outlined as Appendix A to this briefing paper, but primary concerns expressed by EPA, NWEA, and Squaxin Island Tribe include:

- (b)(5) attorney-client [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

(b)(5) attorney-client [REDACTED]

[REDACTED]

### Deschutes (WA) TMDL Key Dates

| Dates                   | Event   |
|-------------------------|---|
| 2004                    | Sampling Plan Completed   |
| 2003 - 2007             | Monitoring  |
| 2007 - 2014             | TMDL Development  |
| April 2014              | Announcement to Submit Freshwater Components Only                 |
| December 2015           | Ecology Submitted TMDL to EPA                                     |
| February - October 2016 | EPA Concerns Shared with Ecology                                  |
| June 2016               | Ecology Hosted Squaxin Island Tribe – Tribal Coordination Meeting |
| August 2016             | EPA/Ecology Discussion with NWEA in Portland, OR                  |
| September 2016          | EPA Request Ecology to Withdraw TMDL                              |
| January 2017            | EPA Received Puget Sound FOIA from NWEA                           |
| March 2017              | EPA Developed Bacteria TMDLs                                      |
| June 2017               | EPA & Ecology Negotiate “Resubmit” Letter                         |
| July 2017               | EPA Received 2 <sup>nd</sup> Submittal Letter from Ecology        |
| August 2017             | Region 10 Shared Draft Approval Letter with HQ                    |
| August 2017             | EPA Received Deschutes NOI from NWEA                              |
| October 5, 2017         | EPA Further Discussed TMDL Withdrawal with Ecology                |
| October 13, 2017        | EPA Region 10 Discussion with NWEA, re: NOI                       |

#### V. KEY ISSUES

Appendix A identifies and discusses EPA and NWEA concerns related to the Deschutes TMDL. In addition, please note these observations:

- (b)(5) attorney-client [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

#### VI. ADDITIONAL POLICY AND LEGAL INFORMATION

Section 303(d)(2) of the CWA requires EPA to “either approve or disapprove [a TMDL] not later than thirty days after the date of submission.” If EPA disapproves a TMDL, Section 303(d)(2) requires EPA to issue a substitute TMDL within 30 days of disapproval. Ecology submitted the Deschutes River TMDL in December 2015, and EPA has not acted. (b)(5) attorney-client [REDACTED]

(b)(5) attorney-client



(b)(5) attorney-client



## VII. RECOMMENDATION

(b)(5) attorney-client



## VIII. ANTICIPATED STAKEHOLDER REACTION/INVOLVEMENT


■ (b)(5) attorney-client



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## IX. NEXT STEPS / UPCOMING DEADLINES

(b)(5) attorney-client



■ (b)(5) attorney-client [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

(b)(5) attorney-client





(b)(5) attorney-client



## APPENDIX A - NWEA Concerns

Ecology scheduled a meeting with Nina Bell on August 2, 2016 at the OR Ops office in Portland, OR to obtain NWEA feedback on the Deschutes TMDL as she had indicated unspecified concerns with the TMDL in previous discussions. Laurie Mann and Chris Zell participated in the meeting at the request of Ecology. Overall, Nina expressed an unfavorable opinion of the TMDL and said the TMDL will not change or improve existing conditions. During settlement discussions for the Washington Water Quality Standards litigation, Nina stated that if Ecology included detailed buffer requirements (e.g. buffer width) as part of the load allocations, she would agree to exclude temperature segments of the Deschutes from the NCC remand that was under discussion at the time. Nina said the DO segments (and maybe pH by reference) of the TMDL were too problematic/flawed and should not move forward.

| NWEA   | Ecology   | EPA   |
|--|---|---|
| <ul style="list-style-type: none"> <li>(1) Unconvinced that TMDL will change existing water quality conditions.</li> <li>(2) Downstream waters not protected (self-stated). Failing to protect DS waters is a big deal. TMDL is kind of a shell because it does not deal with DS waters or tributaries.</li> <li>(3) Buffers show up in implementation rather than allocation section.</li> <li>(4) Need to convert shade values into real, implementable surrogates. How was 75 ft. buffer determined? Vertical and areal density is important. What is mature vegetation?</li> <li>(5) The entire TMDL seems to be a surrogate. Suite of shade surrogates may be needed. Why was channel width not allocated as it was part of NCC demonstration.</li> <li>(6) Compliance with permit seems to be compliance with TMDL as WLAs are mostly existing permit conditions or restated WQS. WLAs do not seem to add value.</li> <li>(7) Using shade as surrogate for parameters other than temperature creates holes.</li> <li>(8) TMDL does not assess if current landuse practices, such as forestry, contribute to sediment impairments.</li> <li>(9) Reasonable Assurance section is inconsistent. Should consider actions that are not already occurring. Deferring to Fish and Forest assurances is a problem.</li> <li>(10) TMDL cites nutrient hotspots and impacts but does not limit nutrients. TMDL advocates a 'we'll evaluate later' approach to septic and other nutrient sources.</li> <li>(11) Better to wait until Budd Inlet and Capital Lake TMDL are complete. Maybe move forward with temperature segments only.</li> </ul> | <ul style="list-style-type: none"> <li>(1) An approved TMDL may help in retiring water rights and obtaining grant funds. An approved TMDL may help bring government partners to the table such as Thurston County and get conservation districts to work together.</li> <li>(2) Acknowledged the TMDL has some deficiencies and is working with EPA on some issues. Benefits of TMDL are relatively minor.</li> <li>(3) TMDL was split because of the contentious nature of Capital Lake and Budd Inlet. Data would become outdated if Ecology waited to do all waters at once. Evidence is pointing primarily to shade and buffers for the Deschutes.</li> <li>(4) Any buffers that Ecology pays for would have to meet NMFS buffer rule (100 ft rather than 75 ft.).</li> </ul> | <p>We primarily listened and took notes. Chris asked Nina to elaborate on Columbia dioxin TMDL and checkpoint approach.</p> |

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|---|--|--|
| <p>(12) Lack of NCC is not an excuse to do nothing. Use the data we have and move forward. No good reason for putting things off. The TMDL should have addressed nutrients even if data were not perfect.</p> <p>(13) TMDL does not justify in-stream sediment fines target. How does in-stream fine targets align with WQS?</p> <p>(14) Ecology is hesitant to address Capitol Lake because of benefits as sediment trap, better than a muddy estuary, expensive infrastructure changes (Lake outlet works, MS4, LOTT facility).</p> <p>(15) Checkpoint approach used in Columbia dioxin TMDL is an appealing large watershed approach.</p> <p>(16) Ecology should not get credit for a TMDL when the allocations do not resolve the DO and nutrient issue.</p> <p>(17) Margin of safety and antidegradation section is confusing</p> <p>(18) Would be willing to consider temperature carve out of NCC remand. TMDLs for DO, pH should not move forward until Budd Inlet is completed. Opinion on sediment was limited.</p> |  |  |
|---|--|--|